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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 In re: Ex Parte Application of Valeska  
12 Sigren Bindhoff for an Order Pursuant  
13 to 28 U.S.C. § 1782 to Conduct  
14 Discovery for Use in Foreign  
15 Proceedings

Case No. 2:24-mc-00105-MEMF-MAA

**ORDER ACCEPTING IN PART  
FINDINGS AND  
RECOMMENDATION OF  
UNITED STATES MAGISTRATE  
JUDGE**

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the ex parte application  
18 to take discovery pursuant to 28 U.S.C. § 1782, ECF No. 1 (“Ex Parte  
19 Application”), the related filings and submissions, other records on file herein, and  
20 the Report and Recommendation of the United States Magistrate Judge, ECF No.  
21 11.

22 The time for filing objections has expired, and no objections have been made.

23 The Report and Recommendation of the Magistrate Judge is ACCEPTED IN  
24 PART. As discussed in the Report and Recommendation, the Supreme Court in  
25 *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), set forth a  
26 number of factors that courts should consider in determining whether to exercise its  
27 discretion to grant an application for discovery under 28 U.S.C. § 1782. *Id.* at 264  
28 (“As earlier emphasized, a district court is not required to grant a § 1782(a)

1 discovery application simply because it has the authority to do so. We note below  
2 factors that *bear consideration* in ruling on a § 1782(a) request.”) (citations  
3 omitted). The Supreme Court did not indicate that any of the factors were required  
4 to be considered, or that any were dispositive, nor did it dictate how heavily a  
5 district court should weigh any individual factor.

6 The Court departs from the recommendation of the Magistrate Judge with  
7 respect to the weighing of the discretionary factors concerning Request No.1. The  
8 first factor identified by the Supreme Court was whether the person from whom  
9 discovery is sought is a party to the foreign proceeding. In *Intel*, the Supreme  
10 Court stated:

11 [W]hen the person from whom discovery is sought is a participant in  
12 the foreign proceeding (as *Intel* is here), the need for § 1782(a) aid  
13 generally is not as apparent as it ordinarily is when evidence is sought  
14 from a nonparticipant in the matter arising abroad. A foreign tribunal  
has jurisdiction over those appearing before it, and can itself order them  
to produce evidence.

15 *Id.* at 264. The Supreme Court did not, however, indicate that an application should  
16 not be granted under these circumstances. The Court accepts that many courts focus  
17 on the question of whether the discovery sought is available in the foreign forum.  
18 *See R. & R.* at 13–15. Be that as it may, the Court finds that the fact of whether the  
19 discovery sought is available in the foreign forum should be of limited importance  
20 given that *Intel* itself makes it clear—in discussing the statutory requirements for a  
21 Section 1782 application—that the statute does not “limit[] a district court’s  
22 production-order authority to materials that could be discovered in the foreign  
23 jurisdiction if the materials were located there,” *id.* at 260, nor does it indicate that  
24 the applicant “must show that United States law would allow discovery in domestic  
25 litigation analogous to the foreign proceeding,” *id.* at 263. This Court therefore  
26 finds that whether the material could be discovered in the foreign jurisdiction  
27 should not weigh particularly heavily in the analysis here. Given that all the other  
28 factors weigh in favor of granting the Application, the Court finds that even if the

1 first factor weighs in favor of denying the Application, the factors as a whole weigh  
2 in favor of granting the Application with respect to Request No. 1.

3 IT THEREFORE IS ORDERED that:

4 (1) the Report and Recommendation of the Magistrate Judge is **ACCEPTED**  
5 **IN PART**; and

6 (2) the Ex Parte Application is **GRANTED in part** and **DENIED in part** as  
7 follows:

8 a. AUTHORIZING issuance and service of the Proposed Subpoenas as  
9 to Requests Nos. 1, 2 and 3 only, which shall be re-written as follows:

10 Request No. 1: Communications between [AB] and any  
11 employee, officer, or director at Lombard Odier, including all  
12 emails with the handle “@lombardodier.com” regarding the  
13 Joint Account, [Applicant], and/or the [Trusts’] Distributions;  
14 Request No. 2: Communications between [AB] and Marc Genet  
15 regarding the Joint Account, [Applicant], and/or the [Trusts’]  
16 Distributions; and  
17 Request No. 3: Communications between [AB] and Emma  
18 Lombardini, or any other member of the law firm Poncet  
19 Turretini Avocats with the email handle “@ptan.ch,” regarding  
20 the Joint Account, [Applicant], and/or the [Trusts’]  
21 Distributions, (hereinafter, the “District Court Authorized  
22 Subpoenas”), without prejudice to AB or any person affected by  
23 the District Court Authorized Subpoenas contesting the District  
24 Court Authorized Subpoenas to the extent permitted by the  
25 Federal Rules of Civil Procedure. *See In re Letters Rogatory*  
26 *from Tokyo Dist.*, 539 F.2d at 1219 (finding that Section 1782  
27 applications are permitted on an ex parte basis because  
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witnesses may raise objections and assert their due process rights by moving to quash the subpoenas). In this regard:

- i. AB or any person affected by the District Court Authorized Subpoenas shall have forty-five (45) calendar days from the date of service of the District Court Authorized Subpoena to file any motions in this Court to contest one or both of the District Court Authorized Subpoenas, which date may be extended by agreement of the parties or order of the Court.
- ii. To allow for such motions, the return date on the District Court Authorized Subpoenas must be set at least forty-six (46) days after the date of its service.
- iii. The obligation of AB to respond to a specific District Court Authorized Subpoena is automatically stayed upon the filing of any motion contesting that specific District Court Authorized Subpoena and such stay shall remain in effect until such motion is resolved.
- iv. The Court reminds any person contesting the District Court Authorized Subpoena(s) of his or her obligation to comply with Central District of California Local Civil Rule 37 and Judge Audero's discovery dispute resolution process before resorting to motion practice in connection with the District Court Authorized Subpoena(s). See C.D. Cal. L.R. 37; <http://www.cacd.uscourts.gov/honorable-maria-audero>.

- b. PROHIBITING issuance and service of the Proposed Subpoenas as to Requests Nos. 4 and 5; and

1 c. ORDERING Applicants to serve a copy of this Order on AB together  
2 with service of the District Court Authorized Subpoena(s).

3  
4 DATED: February 5, 2025



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6 Maame Ewusi-Mensah Frimpong  
7 UNITED STATES DISTRICT JUDGE  
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